Supreme Court no. S044706
Court of Appeal no. 2 Civ. B 064243
L.A. Sup. Ct. no. C 682570

SUPREME COURT
FILED
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Robert Wandruff Clerk
_____ Deputy

THE SUPREME COURT OF THE STATE OF CALIFORNIA

GARY LEHTO,
Plaintiff and Petitioner,
versus
ALLSTATE INSURANCE COMPANY, et al.,
Defendant and Respondent

Appeal from the Judgment of the Court of Appeal
Second Appellate District

PETITION FOR REVIEW

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Issue Four

(Constitutionality of Judgment Notwithstanding the Verdict)

An order for judgment notwithstanding the verdict is a denial of the right to jury trial guaranteed by the California Constitution, Article I, section 16, and by the Constitution of the United States, Amendment 7. *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 446-447, 7 L.Ed. 732 (1830) (right to jury trial guaranteed as it existed at common law at the time constitution created); *Dorsey v. Barba*, 38 Cal.2d 350, 355, 240 P.2d 604, 607 (1952) (right to jury trial as it existed in 1849, at the time California Constitution adopted); *People v. Collins*, 17 Cal.3d 687, 692, 131 Cal.Rptr. 782, 785, *cert. denied*, *Collins v. California*, 429 U.S. 1077, 97 S.Ct. 820, 50 L.Ed.2d 796 (1976).

Directed verdict, upon which an order for entry of judgment notwithstanding the verdict must be based, C.C.P. § 629, was unrecognized at common law. *Slocum v. New York Life Ins. Co.*, 228 U.S. 364, 33 S.Ct. 523, 57 L.Ed. 879 (1913). If a directed verdict was unrecognized at common law when this State embodied the right to jury trial in its constitution, then it cannot now be used to deprive a party of a jury's verdict.

Additionally, a judgment notwithstanding the verdict impairs the litigant's Seventh Amendment right to a jury trial under the federal constitution. While the United States Supreme Court has not held that this amendment is made applicable to the states by virtue of the Fourteenth Amendment, the petitioner believes that this issue should be re-examined. The right to jury trial in state criminal cases is well-recognized. The right to jury trial in civil cases has never been accorded "second-class"

status. *Small v. Transcontinental & Western Air, Inc.*, 96 Cal.App.2d 408, 410, 216 Cal.Rptr. 36, 37 (1950) ("trial by jury is a proper case is the right of every citizen, guaranteed by the Constitution of the United States and by the Constitution of California"). That right in a civil case is a necessary incident of liberty in a civil society. A directed verdict or judgment notwithstanding the verdict necessarily impairs that right.